property or damages still subsist, although they must be asserted only in one forum. The right to strike and the right to compete are, however, substantial, and not merely formal rights. These, together with all other substantial rights, such as titles or liens, should remain unaffected by the receivership. A receiver is appointed to continue a business or care for property in the ordinary business way. Special rights are not conferred; which would be the effect if the substantial rights of other parties were curtailed.

RECENT CASES.

ADMIRALTY — EXTENT OF FEDERAL JURISDICTION. — A contract was made for the repair in dry dock of a canal boat running on the Erie Canal. The statutes of New York give a lien for such repair. *Held*, that the lien is founded on a maritime contract, and hence subject to the exclusive admiralty jurisdiction of the federal courts. *Perry* v. *Haines*, 24 Sup. Ct. Rep. 8. See NOTES, p. 186.

ALIENATION OF AFFECTIONS — PLAINTIFF'S HUSBAND THE SEDUCING PARTY. — In an action for the alienation of a husband's affections, evidence was introduced tending to show that the husband had sought and solicited the defendant. *Held*, that the defendant is liable for damages regardless of whether she or the husband had been the active persuading party. *Hart* v. *Knapp*, 55 Atl. Rep. 1021 (Conn.).

The court reaches its conclusion by applying the analogy of actions by a husband for criminal conversation, in which it is no defense to show that the acts were committed by procurement of the wife. *Bedan* v. *Turney*, 99 Cal. 649. These actions for criminal conversation are commonly allowed on the ground that the wife is incapable of giving such consent as will bar recovery. The fundamental basis of this rule is that defilement of the marriage bed is the gist of the action, and consequently proof of the unlawful act of intercourse alone is sufficient. Actions for alienation of affections, however, are sustained on a different basis, namely, loss of *consortium*, and it would seem to follow that recovery should not be allowed unless the defendant is shown to have been instrumental in depriving the husband or the wife of the other's conjugal society. By the better view, therefore, in order to maintain an action for the alienation of a husband's affections, it must affirmatively appear that the defendant was the active persuading party. *Churchill* v. *Lewis*, 17 Abb. New Cas. 226; *Waldron* v. *Waldron*, 45 Fed. Rep. 315.

ARREST — PRIVILEGE — PERSON UNDER BAIL FOR ANOTHER OFFENSE. — The petitioner was indicted by a Federal grand jury in New York, arrested by virtue of a warrant issued by a United States commissioner, and admitted to bail. He was later indicted in the District of Columbia, and re-arrested on a second warrant issued by the same commissioner. *Habeas corpus* proceedings were brought. *Held*, that the second arrest should be vacated. *United States* v. *Beavers*, 30 N. Y. L. J. 481 (U. S. Dist. Ct., S. D. N. Y.).

The court considers it immaterial that the petitioner had given bail on the first arrest instead of remaining in the marshal's care, considering the custody of the sureties but a continuance of the original imprisonment. This reasoning accords with general statements frequently made as to the nature of bail, but ignores at least one important difference. A person in the care of his sureties may ordinarily, by forfeiting his bail, leave the jurisdiction, but one in the hands of the marshal cannot. The result of the doctrine of the principal case would be that one under light bail for an assault would be exempted from arrest for treason, and given time to escape. All the previous authorities found are against such a conclusion. See *Ingram* v. *State*, 27 Ala. 17; *Wheeler* v. *State*, 38 Tex. 173. Action under one arrest may easily be suspended until the proceedings resulting from the other are terminated, and thus contradictory orders may be avoided. This has been done even where the two offenses were against different sovereignties. *In re James*, 18 Fed. Rep. 853.

ATTORNEY AND CLIENT — DEFENSE OF AN INDIGENT — LIABILITY OF COUNTY FOR COMPENSATION. — *Held*, that a statute providing that a court may award compensation to counsel assigned for the defense of an indigent prisoner is not in violation of

a constitutional provision that no county shall pay out money to, or in the aid of, any individual, or be allowed to incur any indebtedness except for county purposes. *People* v. *Grout*, 30 N. Y. L. J. 453 (N. Y. App. Div.).

Before this statute the courts of New York followed the general rule in holding that an attorney assigned as counsel to an indigent could not recover from the county upon a *quantum meruit*, but must look to his client for remuneration. *People* v. *Niagara County*, 78 N. Y. 622. This rule, however, is not based upon the idea that no benefit is conferred upon the county by such services, but upon the ground that the attorney is under a professional obligation to render them, the consideration having previously been given by the state in admitting him to practise in the courts. *Elam* v. *Johnson*, 48 Ga. 348. The correctness of the decision in the principal case seems to depend upon whether the legislature, recognizing the insufficiency of such antecedent consideration, meant to add a pecuniary reward, or whether it intended to relieve a poor prisoner altogether of the burden of his own defense by providing counsel for him at the public expense. It is probable that the legislature had both objects in view, and if so the decision is sound.

BAILMENT — LIABILITY OF BAILEE FOR ACTS OF SERVANT. — The plaintiff, a coachbuilder, loaned a carriage to the defendant while the latter's trap was being repaired. The coachman in charge of the defendant's carriage-house, without the permission or knowledge of his master, used the carriage on a frolic of his own and damaged it by his negligence. *Held*, that the defendant is liable on his contract of bailment. *Sanderson* v. *Collins*, 89 L. T. 42 (Eng., K. B.).

In general, the master is not liable in tort for the acts of the servant not done within the scope of the servant's authority. *Illinois Central R. R. Co.* v. *Latham*, 72 Miss. 32. But modern cases hold that where the master is under a contractual duty and delegates it to a servant who fails to perform it, the master is liable, whether the servant's disregard of duty be negligent or wilful. *Weed* v. *Panama R. R. Co.*, 17 N. Y. 362. The decision is in accord with this authority, and the result reached seems just. A seemingly contrary result is found in cases which hold that the bailee is not liable for the embezzlement by his servant of the thing bailed, unless negligent himself. *Smith* v. *First National Bank in Westfield*, 99 Mass. 605. But these cases may possibly be distinguished because of the criminal nature of the servant's act; and, furthermore, even in them the courts seem to be tending to hold the bailee to a higher degree of responsibility than formerly. *Preston* v. *Prather*, 137 U. S. 604.

BREACH OF MARRIAGE PROMISE — LIABILITY OF PARENT FOR CAUSING. — The defendants, maliciously and by slanderous representations, induced their son to break his engagement with the plaintiff, thereby causing her material damage. *Held*, that the plaintiff has no right of action against the defendants for causing the breach of contract. *Leonard* v. *Whetstone*, 68 N. E. Rep. 197 (Ind., App. Ct.).

The court bases its decision partly on the ground that procuring the breach of an engagement to marry is not actionable. In general one persuading another without just cause or excuse to break any contract with a third party is liable to the latter. *Jones* v. *Stanly*, 76 N. C. 355; *Rice* v. *Manley*, 66 N. Y. 82. Since the plaintiff's right, the defendant's wrong, the damage caused, and the causal connection are essentially the same where the contract broken is an engagement to marry, as in any other case, there appears no sufficient reason for making an exception. The court takes the further ground that parental advice as to the performance of such a contract should be left absolutely free. In actions for defamation, however, public policy has been held to require only a conditional privilege for communications between parent and child. *Kimble* v. *Kimble*, 14 Wash. 369. It is not apparent why public policy should vary merely because the action is for causing wrongful breach of contract. Since the defendants' representations were malicious as well as slanderous, the decision would appear questionable.

BURDEN OF PROOF — QUANTUM OF PROOF IN CIVIL ACTIONS BASED ON A CRIME. — In a civil action for a felonious assault the defendant requested a ruling to the effect that the plaintiff must prove his case beyond a reasonable doubt. *Held*, that the request should be refused. *Kurz* v. *Doerr*, 86 N. Y. App. Div. 507.

The case is of interest as showing the general tendency of the law of New York with regard to a question which is as yet unsettled in that state. It is supported by the more modern New York decisions upon this point, and is in accord with the great weight of American authority. *Davis* v. *Rome, etc., R. R. Co.*, 56 Hun (N. Y.) 372. The view taken seems clearly sound. When, as in criminal prosecutions, the object is punishment alone, the courts have humanely refused to convict until every reasonable doubt of the guilt of the accused has been excluded. But where, as in the principal

case, a mere civil liability is sought to be established, the reason of that rule fails. Again, in such cases, were there no question of crime involved, a preponderance of the evidence would admittedly be sufficient. It is difficult to see how the fact that the defendant has incurred a liability to the state as well as to the plaintiff, should cast upon the latter the burden of establishing his cause more conclusively.

CHECKS — IMPERSONAL PAYEE. — A check, drawn by the plaintiff, which was made out to no payee other than a line drawn through the space where the name of the payee should have been, was paid by the defendant. The inferior court held that the check was not payable to bearer, and that the defendant might not charge the plaintiff with the amount paid on the incomplete check. By an evenly divided court this holding was left undisturbed on appeal. *Gordon* v. *Lansing State Savings Bank*, 94 N. W. Rep. 741 (Mich.).

The general rule that a check to be valid must have a definite payee, is departed from in the case of a check drawn "to the order" of an impersonal payee, such as to "number 1685," or to "bills payable." *Willets* v. *Phœnix Bank*, 2 Duer (N. Y.) 121; *Mechanics Bank* v. *Straiton*, 3 Abb. Dec. (N. Y.) 269. Such checks are treated as payable to bearer in order to carry out the intention of the maker, shown by his use of words of negotiability, that the check be a negotiable instrument. Where a check was payable merely "to order," the formal requisite of a definite payee was dispensed with for the same reason. *Davega* v. *Moore*, 3 McCord (S. C.) 482. This reasoning would seem to apply equally well to a check payable "to the order" of a line. In this case, as in the others, the maker would seem to have filled in the space for the payee in such a way as to show his indifference as to the particular payee of the negotiable instrument which he intended to put forth.

CONFLICT OF LAWS — ENFORCEMENT OF OBLIGATIONS IMPOSED BY FOREIGN STATUTES. — A New Jersey corporation did business in New York. By statutes in both jurisdictions the directors were liable to the corporation for dividends declared and paid out of the capital stock. *Held*, that a New York court will enforce this liability. *Hutchinson* v. *Stadler*, 85 N. Y. App. Div. 424. See NOTES, p. 192.

CONFLICT OF LAWS — JURISDICTION — GARNISHMENT OF DEBT OWED BY NON-RESIDENT. — A corporation domiciled in Pennsylvania, but having an agent in West Virginia, owed a debt to an employee in Pennsylvania. A creditor of the employee sought to garnish the debt without service of process on the employee by service upon the agent of the corporation in West Virginia. *Held*, that the West Virginia court has no jurisdiction. *Pennsylvania R. R. Co.* v. *Rogers*, 44 S. E. Rep. 300 (W. Va.). See NOTES, p. 188.

CONFLICT OF LAWS — JURISDICTION — SHIPS ON THE HIGH SEAS. — The plaintiff's intestate was negligently killed while on the defendant's vessel on the high seas. The defendant was a resident of New Jersey, but the ship was registered in New York. *Held*, that the law of the owner's residence governs. *International Navigation Co.* v. *Lindstrom*, 123 Fed. Rep. 475 (C. C. A., Second Circ.).

The decision is based on two classes of cases: first, decisions granting a lien for supplies furnished in the port of registration; and second, decisions holding the registry merely *prima facie* evidence of ownership. The decisions as to maritime liens turn, not on the question of jurisdiction over the ship, but on the question whether the owner is present at the port of registration. *The Suliote*, 23 Fed. Rep. 919; *The Plymouth Rock*, 13 Blatchf. (U. S.) 505. The bearing of the second class of decisions is even less apparent. Although no case directly in point has been found, apparently the law of the port of registry has heretofore been supposed to control. See MINOR, CONFLICT OF LAWS, § 120. This also appears the better view for the reason that any interested party could then determine easily what law governed; that the governing law would not be subject to change by sales of the vessel made secretly or while it was abroad; and that the complicated questions resulting from the rule of the principal case where the several owners are residents of many jurisdictions could not then arise.

CONSIDERATION — FAILURE OF — RECOVERY OF MONEY PAID. — The defendant contracted to let his steamer to the plaintiff on the occasion of a naval review to be held in June or July, 1902, for a certain sum payable in advance. The plaintiff having paid the whole consideration, the review was indefinitely postponed. The plaintiff brought suit to recover back the money paid. *Held*, that the plaintiff cannot recover. *Civil, etc., Society* v. *General, etc., Navigation Co.*, 20 T. L. R. 10 (Eng., C. A.).

In deciding similar cases, several of which have arisen in consequence of the postponement of the coronation of King Edward, the English courts have relied chiefly upon two lines of decisions, holding, first, that there can be no recovery for uncompleted work upon the property of another if that property is accidentally destroyed, and second, that no recovery can be had for prepaid freight in consequence of the loss of the ship in which the goods were sent. *Appleby* v. *Myers*, 2 C. P. 651; *Saunders* v. *Drew*, 3 B. & Ad. 445. Neither of those principles is general law in this country. See *Butterfield* v. *Byron*, 153 Mass. 517; *Griggs* v. *Austin*, 20 Mass. 20. The reasoning of the court, therefore, does not apply in this country, but the result might well be sustained on other grounds. Inasmuch as there is no warranty on the part of the defendant that the review shall take place, nor any stipulation by the plaintiff that he shall be repaid if it does not, the peculiar nature of the contract, coupled with the fact that the money was payable in advance, seems fairly to imply that the risk was on the hirer.

CONSTITUTIONAL LAW — PERSONAL RIGHTS — USE OF TRADING STAMPS. — A state statute prohibited the use of trading stamps to be redeemed in merchandise by any person other than the tradesman issuing them. *Held*, that the statute is void, as an unconstitutional infringement on personal liberty. *Young* v. *Commonwealth*, 45 S. E. Rep. 327 (Va.).

The exercise of the police power, in order not to infringe upon the liberty guaranteed to citizens by the Constitution, must bear some reasonable relation to the promotion of health, good order, or morals. *Ruhstrat* v. *People*, 185 Ill. 133. The regulation of such businesses as liquor-selling and butchering, which may, if unrestricted, be injurious to the public welfare, is within this power. *Slaughter-House Cases*, 16 Wall. (U. S.) 36. Such businesses as department stores, however, may not be prohibited under the police power; thus an ordinance forbidding the sale of meats where dry-goods are sold is unconstitutional. *Chicago* v. *Netcher*, 183 Ill. 104. The practice of giving trading stamps does not affect health or good order, nor does it contain such elements of chance as to be objectionable to public morals. *State* v. *Dalton*, 22 R. I. 77. Moreover, premiums given by tradesmen upon purchases are so fair a means of business competition that they cannot be prohibited by the legislature. *People* v. *Gillson*, 109 N. Y. 389. The giving of premiums by another person, in accordance with an agreement to redeem coupons issued by tradesmen, seems equally beyond the exercise of the police power. *People* v. *Dycker*, 72 N. Y. App. Div. 308.

CONTRACTS — DEFENSES — IMPOSSIBILITY OF PERFORMANCE. — The plaintiff's testator contracted to carry mails for the defendant government for one year at an agreed price. War intervening, no mails were supplied. When sued on the contract, the defendant relied upon impossibility of performance. *Held*, that as the carriage was not an impossibility the plaintiff may recover. *Estate of Muller* v. *Government*, 2 Natal Law Quarterly 56 (Sup. Ct., Cape Colony, Nov. 27, 1902).

Two American decisions similar to that in the principal case hold that when the authorities closed the schools on account of the prevalence of disease, they were liable in an action brought by teachers to recover the amount of their salaries. *Dewey* v. *School District*, 43 Mich, 480; *School Town, etc.* v. *Gray*, 10 Ind. App. 428. But performance of the contract would have menaced the health of the community on whose behalf the defendant contracted, and the view which excuses the non-performance of a contract when unforeseen conditions cause its performance to be attended with such extraordinary risk that no reasonable man would attempt to carry it out, seems more consistent with public policy, for the reason that the state cannot risk the loss of its citizens even to preserve inviolate the contracts of individuals. *Lakeman* v. *Pollard*, 43 Me. 463. Unless, however, the defendant's performance of the contract would seriously threaten the public welfare, mere inexpediency of performance would not seem to justify depriving the plaintiff of his contractual rights. On this ground the principal case may well be supported.

CONTRACTS — PAYMENT FOR DEFECTIVE PERFORMANCE AS WAIVER OF BREACH. — The defendant having been forced by circumstances to accept the plaintiff's delayed performance of a contract, objected to paying the contract price, but finally paid it in full, expressing a hope that the plaintiff would do "the fair thing" by him if he suffered damage as a result of the delay. *Held*, that the defendant has waived the right to recover damages for the breach. *Medart, etc., Co.* v. *Dubuque, etc., Co.*, 96 N. W. Rep. 770 (Ia.).

The acceptance of imperfect performance of a contract does not necessarily imply a waiver of the right to sue for damages for the breach. *Hansen* v. *Kirtley*, 11 Ia. 565. A waiver may fairly be inferred, however, from failure to object at the time of the acceptance, or from other evidence showing an intention to waive the default. *Cassady*

v. *Clarke*, 7 Ark. 123. If instalments falling due after default are paid, and continued performance is acquiesced in, the cases are in conflict as to whether the breach can be recouped in damages. *Shute* v. *Hamilton*, 3 Daly (N. Y.) 462; *The Isaac Newton*, Abb. Adm. (U. S. D. C.) 11. Where, as in the principal case, the goods are both received and paid for in full, the evidence of a waiver is even stronger, and the court apparently considers such facts conclusive. Authority upon the question is meager, but there seems to be no reason on principle why an express reservation of a right to sue for damages under these circumstances should not be effective. In the absence of express reservation, however, the present case is to be supported. *Reid* v. *Field*, 83 Va. 26.

COPYRIGHT — AUTHORSHIP OF NEWSPAPER ARTICLE. — The plaintiff sent to a newspaper an account of a current event. From the facts which the article contained a sub-editor of the paper compiled a paragraph which was substantially a new narrative and which was published in the paper. This paragraph, with slight alterations, was subsequently reprinted in a paper of which the defendant was editor. The plaintiff, having registered himself as owner of the copyright in the paragraph, demanded an injunction restraining the defendant from selling papers containing the paragraph. *Held*, that the plaintiff is not the author of the paragraph within the meaning of the Copyright Act. *Springfield* v. *Thame*, 89 L. T. 242 (Eng., Ch. Div.).

There is no copyright in news, but only in the manner of expressing it. *Walter* v. *Steinkopff*, [1892] 3 Ch. 489. The plaintiff here claimed the copyright in the paragraph as printed, not in the original composition. The question to be determined, therefore, was who was in the legal sense author of the paragraph. The decision of the court is in accordance with the decided abridgment cases in both England and America. The early English cases hold that an abridgment is no infringement, unless it is accomplished by a mere mechanical cutting down and is not the result of mental operations on the part of the abridger. *Dickens* v. *Lee*, 8 Jur. 183. The American cases hold that substantially to appropriate the labors of another is piracy, but they give to an abridger the protection afforded by the copyright act when the abridgment can fairly be said to be his creation and to possess the character of an original work. *Folsom* v. *Marsh*, 2 Story (U. S. C. C.) 100. It is clear, therefore, that the sub-editor, and not the plaintiff, is entitled to copyright the paragraph.

CORPORATIONS — DISTINCTION BETWEEN CORPORATION AND ITS MEMBERS. — An insolvent trader, through an agent, sold his business to a corporation, which he promoted for that purpose. The directors of the company were merely his instruments in carrying through the transaction, which divested him of his property and left him with creditors to a large amount. *Held*, that the transfer is void under the Bankruptcy Law as a fraud on the creditors. *In re Slobodinsky*, [1903] 2 K. B. 517.

Although the corporation in the principal case was promoted by the insolvent for the sole purpose of taking over his business in this way, and was entirely controlled by him through his tools, the directors, still by the English law it was a validly existent corporation. *Salomon* v. *Salomon*, [1897] A. C. 22. Consequently the transfer must be regarded as one between two entirely distinct persons. The court sets the transfer aside under the English bankruptcy rule that a transfer of property by an insolvent under such circumstances to another having knowledge of the facts is a fraud on the creditors. In doing this, they treat the corporation as a separate entity, but make use of the fact that the directors are mere tools of the insolvent to charge the corporation with notice of any fraud intended by him. The court thus reaches practically the same result that American courts generally reach in a more direct way by disregarding the fiction of the corporate existence in such cases and dealing with the real parties. *Bank* v. *Trebein Co.*, 59 Oh. St. 316.

DECEIT — RECOVERY FOR EXPRESSION OF OPINION. — The defendant, a Christian Science "healer," represented to the plaintiff, a patient suffering with appendicitis, that he could cure her by Christian Science treatment. The plaintiff took the treatment and suffered injury. *Held*, that the defendant is not liable in deceit for mere expression of opinion, but that it should have been left to the jury to find whether the representation was not one of fact. *Speed* v. *Tomlinson*, N. H., Sup. Ct., Oct. 6, 1903. See NOTES, p. 193.

EMINENT DOMAIN — ELEVATED STREET RAILROADS — INJURY TO ABUTTING OWNER. — The constitution of Illinois provides that private property shall not be taken or damaged for public use without compensation. The plaintiff, an owner of property abutting on the street used by an elevated railroad, sued the railroad company for the damage to his easements of light, air, and access caused by the construc-

tion of the road. *Held*, that the defendant is liable. *Aldis* v. *Union Elevated R. R. Co.*, 68 N. E. Rep. 95 (Ill.).

Elevated railroads are generally held liable on various grounds for injuries to abutting property. In New York they are considered an additional servitude upon the street, and so an illegal obstruction causing special injury to the right of an abutter to have the thoroughfare used only as a highway. They are also regarded as injuring his easements of light, air, and access, and all these injuries are held to be a taking of property which requires compensation. *Abendroth* v. *Manhattan Ry. Co.*, 122 N. Y. 1. Recent decisions, however, have confused the New York doctrine. *Cf. Muhlker* v. *New York & Harlem R. R. Co.*, 173 N. Y. 549. Illinois, however, has refused to treat the elevated structure as an additional servitude. *Doane* v. *Lake Street El. R. R. Co.*, 165 Ill. 510. But the principal case shows that it follows New York far enough to allow recovery to an abutter for injury to his easements of light, air, and access. Nor is this inconsistent with the earlier Illinois cases, for the easements in question are distinct from the abutter's right to an unobstructed thoroughfare, and may be infringed by a permanent structure which is nevertheless proper for the convenient use of the highway. *Calumet & Chicago Canal Co.* v. *Morawetz*, 195 Ill. 398.

EVIDENCE — DECLARATIONS CONCERNING PEDIGREE — BASTARDIZING ISSUE. — Less than six months after a marriage a son was born. In a suit to perpetuate testimony, the husband deposed that prior to marriage he had never had sexual intercourse with his wife, and that soon after marriage she confessed to him that at the time of marriage she was with child by another man. The deposition was offered as evidence to prove that the child was a bastard. *Held*, that the evidence is admissible. *The Poulett Peerage*, [1903] A. C. 395. See NOTES, p. 187.

GIFTS — ADULTERY OF WIFE AS GROUND OF REVOCATION. — A husband, at the solicitation of his wife, made to her a gift of certain property, and upon her subsequent elopement brought this action to recover it. The evidence tended to show that when the defendant accepted the gift, she not only had been guilty of adultery, but also contemplated a renewal of the illicit intercourse, which facts were unknown to the plaintiff. *Held*, that the plaintiff is entitled to equitable relief. *Evans* v. *Evans*, 45 S. E. Rep. 612 (Ga.).

Subsequent adultery of the wife does not invalidate a voluntary settlement. *Lister* v. *Lister*, 35 N. J. Eq. 49. A husband's right to revoke a gift must therefore be based on the wife's fraud in concealing certain facts at the time of the gift rather than upon the wrongful conduct itself. A concealment to be material, however, must be of something that the party was under some obligation to disclose. That obligation is derived from the confidential relation existing between husband and wife, although its extent is not determined by authority. The obligation should perhaps be limited to the disclosure of existing material facts — a wife's intention being one of those facts — since it seems unwise to require her to disclose past misconduct, if her intentions for the future are good. Whatever may be the effect of the wife's failure to disclose her antecedent misconduct in the principal case, the fact that she, in contemplation of subsequent adultery, persuaded her husband to give over the property, clearly entitles him to revoke the gift. *Evans* v. *Carrington*, 2 DeG. F. & J. 481.

ILLEGAL CONTRACTS — CONTRACTS COLLATERALLY RELATED TO ILLEGAL TRANSACTIONS. — The defendant ticket-scalpers were selling the unused return coupons of excursion tickets to the Pan-American Exposition. These tickets showed on their face that they could lawfully be used for the return trip only by those persons who had used them for the trip to Buffalo. The plaintiff, a railroad issuing these tickets, brought the present bill to enjoin the defendants from selling the return coupons. *Held*, that the injunction, should be denied. *New York Central, etc., R. R. Co.* v. *Reeves*, 30 N. Y. L. J. 287 (N. Y., Sup. Ct.).

Many courts have held that the seller's knowledge of the illegal purpose of the buyer does not render illegal a contract of sale made to enable the purchaser to accomplish his end. *Delavina* v. *Hill*, 65 N. H. 94. By this view the principal case is sound; for the defendants themselves would be threatening no wrong to the plaintiff. The better view, however, seems to be that public policy requires such sales to be considered illegal as tainted with the unlawfulness of the buyer's intent. *Church* v. *Proctor*, 66 Fed. Rep. 240; *Graves* v. *Johnson*, 156 Mass. 211. In the principal case there would seem to be no question as to the defendants' knowledge of the fraudulent intention of the purchasers. The illegality of the contract being granted, the case would seem a proper one for an injunction, because the injury to the plaintiff would

appear irreparable on account of the impracticability of detecting the fraud in the case of each individual purchaser. *Cf. Lever* v. *Goodwin*, 36 Ch. D. 1. Such was the holding in an exactly analogous case decided in connection with the exposition at Nashville in 1897. *Nashville, etc., R. R. Co.* v. *McConnell*, 82 Fed. Rep. 65.

INSURANCE — WAIVER OF CONDITIONS OF POLICY BY AGENT. — The plaintiff's husband signed an application for a life insurance policy which stated that the policy should be accepted subject to the conditions therein contained, and should not take effect until the first premium was paid. Upon the delivery of the policy, the general agent of the defendant informed the plaintiff's husband that he might have thirty days additional time in which to pay the first premium, and that the insurance would go into immediate effect. The policy provided that "no agent has power to extend time for paying the premium." The plaintiff's husband was killed within thirty days, and before the first premium was paid. *Held*, that the defendant is not liable on the policy. *Russell* v. *Prudential Ins. Co. of America*, 73 N. Y. App. Div. 617.

For a discussion of the principles involved, see 12 HARV. L. REV. 503; 15 *ibid.* 575.

INTERSTATE COMMERCE — REGULATION — SHERMAN ANTI-TRUST ACT. — All the lumber manufacturers of a city agreed to refuse to sell to consumers who purchased any lumber from outside mills, some of which were situated in another state. *Held*, that since the effect of the agreement upon interstate commerce is only indirect, it is not in violation of the Sherman Anti-Trust Act. *Ellis* v. *Inman, etc., Co.*, 124 Fed. Rep. 956 (Circ. Ct., Dist. of Ore.).

Restraint of trade which is not interstate commerce is not within the prohibition of the Sherman Anti-Trust Act. *United States* v. *Knight, etc., Co*, 156 U. S. 1. No precise definition of interstate commerce, however, is afforded by the cases. An agreement the effect of which is directly to restrain sales between states — such as a combination of foreign coal producers and local dealers, for example — concerns interstate commerce and is forbidden by the Act. *United States* v. *Jellico, etc., Co.*, 46 Fed. Rep. 432. But if sales between the states are only indirectly restrained, as, for instance, by an agreement among local traders in imported live-stock, not to deal with other local traders, interstate commerce is not affected and the Act does not apply. *United States* v. *Hopkins*, 171 U. S. 578. The present agreement directly concerns local sales of local products, and affects interstate commerce merely indirectly and then only in the remote instance of customers who habitually buy part of their stock from foreign producers. Such agreements, it would seem, are rightly held not to be prohibited by the Act. *Cf. Dueber, etc., Co.* v. *Howard, etc., Co.*, 55 Fed. Rep. 851.

LEGACIES AND DEVISES — EXECUTORY DEVISE AFTER A FEE SIMPLE CONDITIONED ON FAILURE TO ALIENATE. — A testator devised property to his wife in fee, but if she did not dispose of it during her life or by will, to B in fee. *Held*, that the devise over is void. *Meyer* v. *Weiler*, 95 N. W. Rep. 254 (Ia.). See NOTES, p. 190.

LIENS — EQUITABLE LIEN THROUGH PAYMENT OF PREMIUMS ON INSURANCE POLICY BY BENEFICIARY. — The plaintiff, as one of several beneficiaries of a life insurance policy, had for some years previous to the death of the insured paid the premiums on the policy in order to keep it from lapsing. *Held*, that the plaintiff, as against the other beneficiaries, has an equitable lien on the proceeds. *Stockwell* v. *Mutual Life Ins. Co.*, 73 Pac. Rep. 833 (Cal.).

Equitable liens are sometimes raised aside from any agreement between the parties. It is generally recognized, for example, that, when one joint owner of certain property makes such repairs as are reasonably necessary for its preservation, an equitable lien upon the property is created. *Alexander* v. *Ellison*, 79 Ky. 148. Equity always seeks to prevent the unjust enrichment of one party at the expense of another, and it is upon this broad principle that such liens are based. A plaintiff claiming an equitable lien must, however, show himself deserving of such relief; consequently a stranger who officiously pays premiums on a life insurance policy acquires no standing in equity. *Meier* v. *Meier*, 88 Mo. 566. When, on the other hand, as in the present case, the premiums have been paid in good faith by one having some claim or color of interest in the policy, it would seem that in equity and good conscience he is entitled to relief in the form of an equitable lien on the proceeds. *Gill* v. *Downing*, L. R. 17 Eq. 316; *contra*, *Leslie* v. *French*, 23 Ch. D. 552.

MORTGAGES — CLOG ON EQUITY OF REDEMPTION. — The defendant mortgaged shares of a tea company to the plaintiff, and agreed to use his influence to have the plaintiff always thereafter employed as the company's broker, and he further agreed, in case any of the company's teas were ever sold through any broker other than the plaintiff,

that he would pay the plaintiff the amount of the commission which the latter would have earned had the sales been made through him. *Held*, that the agreement is a clog on the equity of redemption, and therefore void. *Bradley* v. *Carritt*, [1903] A. C. 253.

For a discussion of the principles involved, see 15 HARV. L. REV. 661.

PARTNERSHIP — NATURE OF STATUTORY PARTNERSHIP ASSOCIATIONS. — The plaintiff was a limited partnership association organized under the laws of Michigan, which gave it power to sue in the association name. The partnership filed a bill in a Federal court in New York for an injunction against the violation of a patent right. *Held*, that the plaintiff may maintain the bill under its association name. *Sanitas Nut Food Co.* v. *Force Food Co.*, 124 Fed. Rep. 302 (Circ. Ct., W. D. N. Y.). See NOTES, p. 194.

POST OFFICE — OFFENSES AGAINST POSTAL LAWS — USE OF MAIL FOR FRAUDULENT PURPOSE. — The postal laws provide for the punishment of any person who shall, in the execution of a fraudulent design, make use of the mails. U. S. Comp. St. 1901, p. 3696. *Held*, that a count in an indictment charging the defendant with having mailed on various days five hundred letters pursuant to a fraudulent scheme will be quashed for duplicity. *United States* v. *Clark*, 125 Fed. Rep. 92 (Dist. Ct., M. D. Pa.).

But one decision upon this point has been found. *United States* v. *Loring*, 91 Fed. Rep. 881. That case goes upon the ground that the execution of the fraudulent design is the offense contemplated by the postal laws, and that each mailing of a letter in consummation of the fraud is merely incident to the offense charged. This view is expressly repudiated in the principal case, and it would seem that the position there taken is sound. The provisions of the postal laws are evidently directed, not against the fraud, but against the use of the mails in connection therewith. It follows that each separate use of the mail in furtherance of the fraudulent design constitutes a distinct violation of the law. See *In re Henry*, 123 U. S. 372.

POWERS — GENERAL POWER OF APPOINTMENT BY WILL — RIGHTS OF CREDITORS. — The donee of a general power of appointment by will contracted to exercise it in favor of one who in return loaned him money. The donee of the power died insolvent, leaving a will which carried out his agreement. *Held*, that the rights of the appointee in the property subject to the appointment are postponed to those of the general creditors of the testator. *Beyfus* v. *Lawley*, [1903] A. C. 411. See NOTES, p. 189.

RECEIVERS — INTERFERENCE WITH RECEIVER'S POSSESSION. — The plaintiff and defendant were partners in business. On the application of the plaintiff a receiver was appointed and the partnership declared dissolved. The defendant set up a rival business under a similar name, and tried to induce employees of the old firm to leave and to enter his employ, and also attempted to secure a lease of a field used by the partnership business. A motion was made by the plaintiff for an injunction to restrain the defendant from interfering with the receiver. *Held*, that an injunction will be granted. *Dixon* v. *Dixon*, 89 L. T. 272 (Eng., Ch. D.). See NOTES, p. 196.

RECEIVERS — PERMISSION TO APPEAL. — The receiver of an insolvent corporation, at the instance of the majority of the proving creditors, applied to the court by which he was appointed and controlled for permission to take an appeal, at the expense of the insolvent estate, from a decree which retained within the lien of a mortgage valuable property belonging to the corporation. The mortgagee was also the largest unsecured creditor. *Held*, that the court will not give permission to appeal. *Cook* v. *Anderson Food Co.*, 55 Atl. Rep. 1042 (N. J., Ch.).

Whether or not a receiver shall be given permission to bring a suit lies wholly in the discretion of the court by which he is appointed and whose servant he is. *Wayne Pike Co.* v. *State*, 134 Ind. 672. In the present case, although the receiver requested permission to bring the appeal as receiver, the real struggle was between the mortgagee and the other unsecured creditors. If the appeal were taken and the decree reversed, the mortgagee, as secured creditor, would lose the mortgaged property, and, whether or not the decree were reversed, he, as unsecured creditor, would have to pay his share of the costs of litigation against himself. The court properly held that the mortgagee ought not to be forced in advance into a position in which he would have to contribute to the expenses of a suit against himself. Those creditors who desire the receiver to bring the appeal in his name might easily remove this objection by securing to him the costs of the appeal.

RESCISSION — FRAUD — PATENT TO PUBLIC LAND. — The defendant, by means of false representations and bribery, secured a patent from the United States to a quarter section of public land, but paid the highest price for which the land could be

sold under any existing law. The government was under no obligation to convey the title to any other person. The United States brought suit to cancel the patent. *Held*, that equity will give no relief. *Lynch* v. *United States*, 73 Pac. Rep. 1095 (Okla.).

The court in this case relies upon the principle that equity will not interpose to annul a conveyance, although obtained fraudulently, unless pecuniary damage to the complainant can be shown. That rule, however, is by no means universally accepted. *Williams* v. *Kerr*, 152 Pa. St. 560; *Harlow* v. *La Brum*, 151 N. Y. 278. Even granting that it is ordinarily sound, the peculiar circumstances affecting the disposal of public land would seem to justify an exception to it in cases of this character. The position of the government is entirely different from that of a private individual who is seeking to sell land at a profit. Its purpose is to open up land to settlement by proper persons at a price below the market value; and the amount charged is the least part of the real inducement for issuing its patents. See *United States* v. *Trinidad, etc., Co.*, 137 U. S. 160. Under the rule of the principal case, however, this policy of the government may regularly be frustrated by any swindler who is ready and willing to pay the legal price of the land. See *United States* v. *Pratt, etc., Co.*, 18 Fed. Rep. 708.

SALES — BILL OF LADING — LIABILITY OF ASSIGNEE FOR VENDOR'S BREACH OF CONTRACT. — The defendant purchased from the vendors of certain cotton a draft on the plaintiff, the vendee. The bill of lading of the cotton was attached to the draft. The vendee paid the draft and obtained the bill of lading. He later sued the defendant because the cotton was short in weight. *Held*, that the defendant is not liable. *Blaisdell, Jr., Co.* v. *Citizens' Nat'l Bank*, 75 S. W. Rep. 292 (Tex., Sup. Ct.).

This case repudiates a doctrine which originated in Texas and has had some following. For a discussion of that doctrine, see 16 HARV. L. REV. 292.

SET-OFF AND COUNTERCLAIM — SET-OFF OF CLAIM PURCHASED AFTER INSOLVENCY. — By statute the right to purchase claims against an insolvent, and to use them by way of set-off, ceased upon the filing of the petition for a receiver. After the reputed insolvency of a bank, but before the petition was filed, the defendant, being indebted to the bank, purchased a claim against it. The receiver subsequently brought suit on the debt. *Held*, that the defendant may set off the claim purchased. *Nix* v. *Ellis*, 45 S. E. Rep. 404 (Ga.).

The defendant's claim, since it was not one affected by the statute, would come within the generally recognized principle that claims may be purchased and set off. *Meriwether* v. *Bird*, 9 Ga. 594. A receiver takes property subject to all existing claims. *Van Wagener* v. *Paterson Gas Co.*, 23 N. J. Law 283. It would seem therefore that the receiver took subject to the defendant's right of set-off. Indeed a set-off, though it must be pleaded in bar, has been held so far to extinguish the debt that after its acquirement the debt can no longer be considered an asset. *Finnell* v. *Nesbit*, 16 B. Mon. (Ky.) 351. That the result reached works a hardship to the creditors of the insolvent is true, and in many instances transactions like the present are forbidden by statute. *Stone* v. *Dodge*, 96 Mich. 514; U. S. Comp. St. 1901, p. 3450. But in the absence of statute the principal case seems sound, and is in accordance with the weight of authority. *Moseby* v. *Williamson*, 5 Heisk. (Tenn.) 278; *Hawkins* v. *Whitten*, 10 B. & C. 217. There are some decisions *contra*. *Kennedy* v. *New Orleans Sav. Inst.*, 36 La. Ann. 1. But the cases usually cited in opposition are distinguishable, since they proceed upon some special fact from which the court finds that the debt due the insolvent was actually held in trust for the creditors. *Smith* v. *Hill*, 8 Gray (Mass.) 572; *Sawyer* v. *Hoag*, 17 Wall. (U. S.) 610.

STATUTORY CONSTRUCTION — PROVISIONS FOR NOTICE TO VOTERS. — A statute set a date as the meeting day for voters of street lighting districts, and provided for ten days notice. The plaintiff was present and voted, without protesting, at a meeting notice of which had not been posted ten days before. No voters were shown not to have been warned. On certiorari to review the proceedings, *Held*, that the plaintiff is estopped from questioning the regularity of the meeting. *Brown* v. *Street Lighting District, etc., of Woodbridge*, 55 Atl. Rep. 1080 (N. J., Sup. Ct.). See NOTES, p. 191.

SURETYSHIP — SURETY'S DEFENSES BASED ON EXTINGUISHMENT OF PRINCIPAL'S OBLIGATION. — The defendant's signature as co-maker upon a note was forged, and subsequently ratified. The defendant was in fact a surety, which fact was known to the plaintiff, the payee. Upon a renewal note the defendant's signature was again forged. *Held*, that the defendant is liable on the original note. *Central National Bank* v. *Copp*, 31 Banker and Tradesman 2019 (Mass., Sup. Ct., Oct. 22, 1903).

By ratifying his forged signature on the original note, the defendant by Massachusetts law became liable thereon as if the signature had been made by his authority. *Greenfield Bank* v. *Crafts*, 86 Mass. 447. The acceptance of a renewal note *prima facie* discharges the original obligation. But if the renewal note is void, the original obligation revives against both makers. *Williams* v. *Gilchrist*, 11 N. H. 535. And if, by the forgery of the maker, the renewal note is unenforceable against the party whose signature as co-maker has been forged, the payee may elect either to enforce it against the real maker or to treat it as void and to sue on the original note. *Leonard* v. *Congregational Society*, 56 Mass. 462. At the time of renewal the party whose signature on the renewal note was forged was, within the knowledge of the payee, surety on the original note. Had the surety actually been prejudiced by changing his position in reliance upon the satisfaction of the original obligation, he would be discharged. *Kirby* v. *Landis*, 54 Ia. 150. But since the surety has shown no actual prejudice, the creditor still retains his rights on the original obligation. *Hubbard* v. *Hart*, 71 Ia. 668.

TRADE SECRETS — NATURE OF RIGHT ACQUIRED BY PURCHASER. — The plaintiffs bought the formula and right to an unpatented medicine from the inventor, who covenanted not to reveal it to any other person. Afterward, however, he sold it to the defendants, who were innocent purchasers. They manufactured and sold it, and the plaintiffs brought suit against them for damages. *Held*, that the plaintiffs cannot recover. *Stewart* v. *Hook*, 45 S. E. Rep. 369 (Ga.).

At common law, an inventor has no absolute property in his invention. *Brown* v. *Duchesne*, 19 How. (U. S.) 183. So long as he keeps it secret, however, equity will restrain anyone who discovers it through fraud from using or disclosing it. *Morison* v. *Moat*, 9 Hare 241; *Tabor* v. *Hoffman*, 118 N. Y. 30. A purchaser from the inventor acquires the same right. *Vickery* v. *Welch*, 19 Pick. (Mass.) 523. The principal case, however, shows that protection is not granted against a *bona fide* purchaser for value, even where the vendor acted in fraud of the plaintiff's rights. This would seem to indicate that the right in a trade secret is merely equitable, and this view has found favor. *Cf. Chadwick* v. *Covell*, 151 Mass. 190. No case has been discovered allowing an action for damages, and all the decisions appear to have been in equity. If it is a common law right, the *bona fide* purchaser can be protected only on the theory that possession of knowledge includes title to it, for the reason that the common law, acting *in rem*, is powerless to take it away from one who has once acquired it. The theory that it is an equitable right, however, seems much simpler.

WITNESSES — PRIVILEGE AGAINST SELF-INCRIMINATION. — A witness refused to answer certain questions on the ground that his answers might tend to criminate him. § 342 of the penal code reads as follows: "No person shall be excused from giving testimony . . . upon the ground that such testimony would tend to convict him of a crime; but such testimony cannot be received against him upon any criminal investigation or proceeding." Art. 1, § 6 of the state constitution provides that no person "shall be compelled, in any criminal case, to be a witness against himself." *Held*, that the defendant is justified in his refusal to answer. *Lewisohn* v. *O'Brien*, 176 N. Y. 253.

This decision overrules the previous New York rule. For a discussion of the principles involved, see 5 HARV. L. REV. 346; 10 *ibid.* 120; 13 *ibid.* 296.